MICHIGAN LAW REVIEW

PUBLISHED MONTHLY DURING THE ACADEMIC YEAR, EXCLUSIVE OF OCTOBER, BY THE
LAW FACULTY OF THE UNIVERSITY OF MICHIGAN

SUBSCRIPTION PRICE, $2.50 PER YEAR. . . . . 35 CENTS PER NUMBER

NOTE AND COMMENT

CONSTITUTIONAL LAW—UNLAWFUL DELEGATION OF LEGISLATIVE POWER.—In the case of *Schaezlein* v. *Cabaniss*, (1902), 135 Cal. 466, 67 Pac. Rep. 755, 56 L. R. A. 733, the subject of legislative delegation of power is discussed in connection with a situation that is somewhat exceptional. A statute of the state provides that "if in any factory or workshop any process or work is carried on by which dust, filaments, or injurious gases are generated or produced that are liable to be inhaled by the person employed therein, and it appears to the commissioner of the bureau of labor statistics that such inhalation could, to a great extent, be prevented by the use of some mechanical contrivance, he shall direct that such contrivance shall be provided, and within a reasonable time it shall be provided and used." The violation of the statute is made a misdemeanor. In this case, a conviction, under the statute, for unlawfully refusing and neglecting, after notice, "to provide and use a suction exhauster with properly attached pipes, hoods, etc., in a metal polishing shop" is attacked on the ground of the unconstitutionality of the act. In discussing the question raised, the court, while recognizing the right of the state, in the exercise of its police powers, to enact reasonable laws for the protection of employees who are engaged in callings in which they are exposed to unusual dangers from accident or in which their health is liable to suffer from exposure to unsanitary conditions, and to make the violation of such laws penal offenses, and while sanctioning the doctrine that the right of the employer freely to contract with those who enter his employment is not invaded by general laws that require that reasonably safe places and reasonably wholesome surroundings be furnished to workmen, holds the act in question invalid for the reason that it provides for the delegation of discretion in such a way that an officer has the

power to *make* a law for the individual case and to enfore such rules of conduct as he may prescribe. "The difficulty with the present law," says the court, "is that it is an attempt to confer upon a single person the right arbitrarily to determine, not only that the sanitary condition of a workshop or factory is not reasonably good, but to say whether, even if reasonably good, in his judgment its condition could be improved by the use of such appliances as he may designate, and then to make a penal offense of the failure to install such appliances. 'The very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself.' *Yick Wo* v. *Hopkins*, 118 U. S. 356, 6 Sup. Ct. Rep. 1064. Under the law here in question, it matters not how unwholesome, how dangerous, how unsanitary, the condition of any factory or workshop may be, the proprietor is guilty of no offense until the commissioner of the bureau of labor statistics has required him to use appliances which the commissioner himself shall designate, and he has refused so to do. Nor does it matter if the condition of such a workshop be reasonably wholesome for the uses of the operators, if 'dust, filaments, or injurious gases' are 'liable to be inhaled' (and it is here the mere liability, and not the fact, of the inhalation which invites the action of the commissioner), and if, in the opinion of the commissioner, such liability to inhalation could 'to a great extent' be prevented, he may designate and prescribe the kind of appliance which, in his judgment, is suitable for such purpose and it must be employed." It is further argued that, under the law, the judgment of the commissioner is not only determinative as to whether or not the condition of the factory may be improved, but that it is conclusive and binding as to the appliances to be used; that thus it may happen that "arbitrarily and within the declaration, not of the legislature, but of the commissioner, no burden whatever may be imposed upon one institution, while the other in obedience to this law, may be subjected to a most onerous and even destructive expense. The legislature, as we have said, may require the owners of factories and workshops to put their buildings in proper condition as to sanitation, may require them to provide reasonable safeguards against danger for the operator, but it may not leave the question as to whether and how these things shall be done or not done to the arbitrary disposition of any individual."

Yet under certain circumstances and within proper limitations, discretionary power may be delegated by the legislature. For example, it is held in *St. Louis Consolidated Coal Company* v. *Illinois* (1902), 185 U. S. 203, that an act to provide for the health and safety of persons employed in coal mines is not objectionable because inspectors are by it invested with a discretion to cause the mines to be inspected more than four times a year and as often as they may deem it necessary, the act requiring at least four inspections a year, and because the fees for such inspection may be fixed by the inspectors within the limits provided in the act. The reasoning of the court is that the exercise of discretion by the legislature in the particulars mentioned, would be impossible, and that, as it must be exercised by some one, it may, within the limits provided in the act, be delegated to competent inspectors. "It is insisted," says the court, "that such classification of mines, as to the number of inspections and fees therefor should be made by

the legislature, and nothing be left to the inspectors or other officers to determine the number of times a particular mine shall be inspected and the fees chargeable therefor. The ordinary classification is made by the legislature, where such classification can be logically made, either upon the basis of capital stock, number of operatives, mileage, or other facts which can be seized upon as an easy and an approximately just basis for classification. But in such a case as this there are so many elements entering into the classification as to make it impossible to seize upon one or two, and make them the only basis. . . . We do not regard the act as necessarily violative of the Fourteenth Amendment, in the fact that some discretion is allowed to the inspector in determining the number of times the mines shall be inspected and the fees paid therefor, particularly in view of the fact that no complaint is made of the abuse of such discretion, or that the inspectors have been 'guilty of any act tending to the injury of miners or operators of mines during their term of office.' "

Further, it is held not to be an improper delegation of legislative power to confer upon boards of health authority to make reasonable regulations for the purpose of carrying out the object for which they are created. See *Blue* v. *Beach*, 155 Ind. 121, 50 L. R. A. 64, 80 Am. St. Rep. 195; *Hurst* v. *Warner*, 102 Mich. 238, 26 L. R. A. 484, 47 Am. St. Rep. 525.

FRAUDULENT CONVEYANCES—ESTOPPEL AGAINST MARRIED WOMAN.—It was a doctrine of the common law that a married woman, by reason of her inability to contract, could not be bound by an estoppel. This doctrine, however, has been very largely and generally changed through the enactment of statutes that have, to a great extent, removed her common law disabilities. At the present time, a married woman is bound by an estoppel the same as any other person, whenever she acts within the compass of her capacity to contract. Thus she may, under certain circumstances, be estopped from asserting interests in her own property as against her husband's creditors. It is now well recognized doctrine that the wife, after permitting the husband to take title to her property and to use it for a considerable time in such a way as to give the impression to those with whom he is dealing, that he is the owner thereof, will be estopped, if she fully understands the situation, from setting up a claim thereto, as against the creditors of the husband, Numerous authorities in support of this proposition will be found collected in the note to *Trimble* v. *State*, 57 Am. St. Rep. 175, 176. The doctrine was applied in the recent case of *Cowling* v. *Hill*, 69 Ark. 350, 63 S. W. 800, 86 Am. St. Rep. 200, wherein it appears that land coming to the wife from the estate of her father was conveyed to the husband, and was for about twenty years held by him and treated by him as his own, without objection from the wife. The husband was a merchant, and included the land as a part of his assets in making statements to commercial agencies. The court found that "both he and his wife must have known that his creditors were dealing with him under the belief that it belonged to him," and held that, under the circumstances disclosed, the wife "should not be allowed to set up a claim to it as against the creditors of her husband," and that "a conveyance by him to her with a view to prevent its seizure by his creditors was fraudulent and void."